

HOUSE No. 2659

By Mr. Spellane of Worcester, petition of Robert P. Spellane relative to the disclosure of certain gifts made by pharmaceutical companies to persons authorized to prescribe or dispense prescription drugs. Public Health.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO THE DISCLOSURE OF GIFTS BY PHARMACEUTICAL COMPANIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 112 of the General Laws is hereby amended by insert-
2 ing after Section 24F the following Section:—

3 Section 24G:

4 (1) Annually on or before January 1 of each year, every phar-
5 maceutical manufacturing company doing business in Massachu-
6 setts shall disclose to the Massachusetts Board of Registration in
7 Pharmacy the value, nature and purpose of any gift, fee, payment,
8 subsidy or other economic benefit provided in connection with
9 detailing, promotional or other marketing activities by the com-
10 pany, directly or through its pharmaceutical marketers, to any
11 physician, hospital, nursing home, pharmacist, health benefit plan
12 administrator or any other person in Massachusetts authorized to
13 prescribe, dispense, or purchase prescription drugs in this state.
14 Disclosure shall be made on a form and in a manner prescribed by
15 the board. Initial disclosure shall be made on or before January 1,
16 2004 for the 12-month period ending June 30, 2003. The board
17 shall provide to the office of the attorney general complete access
18 to the information required to be disclosed under this subsection.
19 The office of the attorney general shall report annually on the dis-
20 closures made under this section to the State Legislature and the
21 governor on or before March 1.

22 (2) Each company subject to the provisions of this section shall
23 also disclose to the board, on or before October 1, 2003 and annu-

24 ally thereafter, the name and address of the individual responsible
25 for the company's compliance with the provisions of this section.

26 (3) The Massachusetts Board of Registration in Pharmacy and
27 the office of the attorney general shall keep confidential all trade
28 secret information, as defined by subdivision 317(b)(9) of Title 1.
29 The disclosure form prescribed by the board shall permit the com-
30 pany to identify any information that is a trade secret.

31 (4) The following shall be exempt from disclosure:

32 (A) free samples of prescription drugs intended to be distrib-
33 uted to patients;

34 (B) the payment of reasonable compensation and reimburse-
35 ment of expenses in connection with bona fide clinical trials. As
36 used in this subdivision, "clinical trial" means an approved clin-
37 ical trial conducted in connection with a research study designed
38 to answer specific questions about vaccines, new therapies or new
39 ways of using known treatments;

40 (C) any gift, fee, payment, subsidy or other economic benefit
41 the value of which is less than \$25.00; and

42 (D) scholarship or other support for medical students, residents
43 and fellows to attend a significant educational, scientific or
44 policy-making conference of a national, regional, or specialty
45 medical or other professional association if the recipient of the
46 scholarship or other support is selected by the association.

47 (b) The attorney general may bring an action in Suffolk supe-
48 rior court for injunctive relief, costs, and attorneys fees, and to
49 impose on a pharmaceutical manufacturing company that fails to
50 disclose as required by subsection (a) of this section a civil
51 penalty of no more than \$10,000.00 per violation. Each unlawful
52 failure to disclose shall constitute a separate violation.

53 (c) As used in this section:

54 (1) "Pharmaceutical marketer" means a person who, while
55 employed by or under contract to represent a pharmaceutical man-
56 ufacturing company, engages in pharmaceutical detailing, promo-
57 tional activities, or other marketing of prescription drugs in this
58 state to any physician, hospital, nursing home, pharmacist, health
59 benefit plan administrator, or any other person authorized to pre-
60 scribe, dispense, or purchase prescription drugs. The term does
61 not include a wholesale drug distributor or the distributor's repre-
62 sentative who promotes or otherwise markets the services of the
63 wholesale drug distributor in connection with a prescription drug.

64 (2) “Pharmaceutical manufacturing company” means any entity
65 which is engaged in the production, preparation, propagation, com-
66 pounding, conversion, or processing of prescription drugs, either
67 directly or indirectly by extraction from substances of natural origin,
68 or independently by means of chemical synthesis, or by a combina-
69 tion of extraction and chemical synthesis, or any entity engaged in
70 the packaging, repackaging, labeling, relabeling, or distribution of
71 prescription drugs. The term does not include a wholesale drug dis-
72 tributor or pharmacist licensed under Section 24 of Chapter 112 of
73 the General Laws.